

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION and  
THE SURFRIDER FOUNDATION,

Plaintiffs,

v.

JEFFREY A. ROSEN, in his official capacity; U.S.  
DEPARTMENT OF JUSTICE; ANDREW  
WHEELER, in his official capacity; U.S.  
ENVIRONMENTAL PROTECTION AGENCY, and  
JEFFREY BOSSERT CLARK, in his official capacity,

Defendants.

Civil Action No.  
1:20-CV-11827-ADB

**DEFENDANTS' MOTION TO DISMISS**

Defendants, by their undersigned attorneys, move this Court for an Order dismissing this action, with prejudice, pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs lacks standing to sue, the matter is not ripe for adjudication, and Plaintiffs have not pleaded, and cannot plead, a claim upon which relief could be granted. The grounds for this Motion are more fully set forth in the accompanying Memorandum of Law in support of the Motion to Dismiss.

WHEREFORE, Defendants request that its motion be granted and that the Court dismiss this action, with prejudice.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Counsel for Defendants respectfully request the Court to schedule oral argument in connection with the Motion to Dismiss. Plaintiffs seek to invalidate

an internal agency memorandum pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(2)(a). Given the novelty of this challenge and the importance of enforcement discretion to the orderly functioning of the executive branch, Counsel for Defendants believe oral argument will assist the Court in evaluating the challenged memorandum addressed in the Memorandum of Law in support of the Motion to Dismiss.

Respectfully submitted.

By: /s/ Hunter J. Kendrick  
JONATHAN D. BRIGHTBILL  
*Principal Deputy Assistant Attorney General*  
R. JUSTIN SMITH  
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### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Date: January 8, 2020

/s/ Hunter J. Kendrick  
HUNTER J. KENDRICK

### **CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule 7.1(a)(2), I certify that Counsel for Defendants have conferred with counsel for Plaintiffs regarding this motion in an attempt to narrow or resolve the issues.

Date: January 8, 2020

/s/ Hunter J. Kendrick  
HUNTER J. KENDRICK